

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Promotion of Competitive Networks)
in Local Telecommunications Markets)

WT Docket No. 99-217

Wireless Communications Association)
International, Inc. Petition for Rulemaking to)
Amend Section 1.4000 of the Commission's Rules)
to Preempt Restrictions on Subscriber Premises)
Reception or Transmission Antennas Designed)
To Provide Fixed Wireless Services)

Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules)
to Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes)
and Assessments)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

COMMENTS

Comment Date: August 13, 1999

Comment by Mike Tisiker, Condominium Co-owner and Member of Condominium Association Board of Directors.

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I. INTRODUCTION AND SUMMARY

1. This includes comments from the perspective of the Condominium Co-owner.
2. Determination of the services to be provided and the manner in which they shall be provided is the right and responsibility of the authority, specified in the Deed or the Bylaws of the Condominium. Additional rules are not required and are not desirable.
3. The same determination applies for both easements and limited-use common elements within the Condominium.
4. Proposed rules redistribute maintenance charges and liabilities from the individual, or from the minority, to the majority of property owners without obtaining prior consent.
5. Proposed rules place increased liability and burden on property owners for the benefit of the profit-making organization without prior consent.

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II. DISCUSSION

A. Use of Easements.

6. Authority to exert control over Condominium Common Elements, including the granting of rights to use real estate and other property, are typically granted by Deed.

These rights typically include the ability to grant easements on the property.

7. Condominium bylaws, approved by the Co-owners, further amplify the authority, the rights, and the responsibilities to maintain and to use the real estate and other property.

They typically include an agreement to jointly administer the real estate.

8. Co-owners purchase property based on a value that includes the right to jointly exert control over the Condominium Common Elements. Additionally, Co-owners agree to limitations on personal use of real estate when purchasing property in the Condominium.

9. Easements may be granted, by the designated authority within the Condominium Association, for express purposes. The extension of easements without the express consent of the Condominium Association represents a taking. In many suggested uses, this taking is for the benefit of a profit-making organization.

10. Such taking places multiple burdens on the Co-owners of the real estate. First, the nature of the easement is altered, changing the degree to which the co-owners may be liable for damage to the new and extended use within the previously granted easement.

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This is particularly true when telecommunications facilities with tens, hundreds, and thousands times the capacity of existing telecommunications facilities are placed within a previously-granted easement or when the population served by such facilities represents a substantial increase to the population served by existing facilities. The capacity of the telecommunications facility is generally not discernable by the average person. There is no guarantee that its use will be limited to the population served by the existing facilities. Second, the degree to which the association must forbear in use and maintenance of its property may be substantially changed.

11. The argument that the individual, or the minority of Co-owners, must have access to an alternative source of services is without merit. The subject individuals have already agreed to the administrative arrangements stated in the Deed and the Bylaws of the Condominium Association. Determination of the services to be provided and the manner in which they shall be provided by the authority, specified in the Deed or the Bylaws, is sufficient. The individual who disagrees with the determination of the specified authority may attempt to sway the authority within specified procedures, or may terminate its interest in the Condominium.

B. Access to Buildings – Limited-Use Common Condominium Elements.

12. Extension of guidelines for use of Limited Common Elements to place receiving antennas or other communications equipment has hidden costs that are borne by the

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Condominium Co-owners in general. Although Limited Common Elements are typically dedicated to the use of an individual Co-owner, maintenance responsibility for the elements may remain with the Condominium Association. Attachment of equipment to the Limited Common Elements creates maintenance penalties and potential liabilities on the part of the Association of Co-owners for the benefit of individual Co-owner.

13. The argument that the individual, or the minority of Co-owners, must have access to an alternative source of services is without merit. The subject individuals have already agreed to the administrative arrangements stated in the Deed and the Bylaws of the Condominium Association. Determination of the services to be provided and the manner in which they shall be provided by the authority, specified in the Deed or the Bylaws, is sufficient. The individual who disagrees with the determination of the specified authority may attempt to sway the authority within specified procedures, or may terminate its interest in the Condominium.

14. In the case of satellite services in multifamily dwellings, a more suitable solution to antennas dedicated for individual owners may be multifamily antennas and multifamily equipment configurations.

III. CONCLUSION

15. Additional rules are not desirable for Condominium Associations or for Condominium Co-owners. The covenants within the Deed and Bylaws specify the conditions under which the property owned and maintained by the Co-owners may be

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administered. Additional proposed rules have two deleterious impacts. First, they burden the majority of Co-owners to the benefit of the individual, or to the benefit of the minority of Co-owners, or to the benefit of a profit-making organization. Second, they open easements, granted by the property owners for express purposes, to expanded use that would likely fall outside the maintenance and liability tolerance of the Co-owners.

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